

**REMARKS**

Applicant thanks the Examiner for the thorough consideration given the present application. Claims 5, 7 and 8 are currently being prosecuted. The Examiner is respectfully requested to reconsider his rejections in view of the amendments and remarks as set forth below.

**Telephone Interview**

Applicant notes with appreciation the telephone interview granted by Examiner Chiang on August 20, 2004. During the interview, Applicant discussed possible changes to the claims to overcome the rejections. In particular, the better definition of the nozzle and the tapered shape of the casing were discussed. No specific agreement was reached during the interview. Applicant is submitting the present amendment for full consideration by the Examiner.

**Drawings**

The Examiner objected to the drawings and indicated that Figure 5 should have a label "Prior Art". Applicant does not understand this requirement. The Examiner included this requirement in the first Office Action dated April 3, 2003. In response to this, Applicant submitted the Amendment of July 3, 2003, which contained such an amended figure. This requirement was

dropped in the second Action dated September 24, 2003, presumably due to the filing of amended Figure 5. Applicant does not understand the reinstitution of this objection. Applicant is submitting herewith a copy of the drawing and letter provided with the Amendment of July 3, 2003. If the Examiner persists in this requirement, he is requested to explain why the previous change to Figure 5 was not acceptable.

**Rejection under 35 U.S.C. § 102**

Claim 7 stands rejected under 35 U.S.C. § 102 as being anticipated by Burris et al. (U.S. Patent 4,720,857). This rejection is respectfully traversed.

The Examiner points out that Burris shows a telephone case 110 having an opening 144 formed in a sidewall and a sound producing device 140 set in the telephone case 110. The Examiner points out that the nozzle 141 is inserted into opening 144. Applicant submits that claim 7 is not anticipated by this reference.

Claim 7, as presently amended, describes a portable telephone having a combination of elements, including a telephone case, an opening formed in the sidewall of the case, a sound producing device having an independent casing where the casing of the sound producing device has an upper casing and a lower casing, with the upper casing provided for receiving the sound emitted from the

sound producing device, both side corners of the upper casing being chamfered to form a tapered portion, and a nozzle formed by horizontally extending the front end of the tapered portion, the nozzle also having a flat rectangular opening end and being communicated with the upper chamber to discharge the sound, the nozzle being inserted in the opening of the telephone case so that an opening end of the nozzle opens at the opening of the telephone case. Applicant submits that this combination of elements is not shown by either Burris et al. or Konomi.

In particular, neither of the references teach such a combination of elements where the sound producing device has the specific arrangement of two casings with the chamfering of the upper casing to form a tapered portion in the nozzle having the arrangement described. Since neither of these references teach this combination of elements, Applicant submits that claim 7 is allowable thereover.

Claim 5 depends from claim 7 and, as such, is also considered to be allowable. In addition, this claim is further allowable based on its description of the cylindrical portion.

Claim 8 is an added claim, which further describes the substrate secured to the lower casing and two chamfered portions at a rear side of the casing with terminals connected to the substrate. Applicant submits that these features are also not

shown in the references so that this claim is additionally allowable.

**Rejection under 35 U.S.C. § 103**

Claim 5 stands rejected under 35 U.S.C. § 103 as being obvious over Burris et al. in view of Konomi. The Examiner states it would have been obvious to include the cylindrical cushion of Konomi in Burris et al. Applicant submits that claim 5 is not obvious over these two references. In particular, since claim 5 depends from allowable claim 7, Applicant submits that claim 5 is likewise allowable. Furthermore, it is submitted that it would not be obvious to include the cylindrical cushion in the Burris et al. device. Applicant submits that the difference in types of earpieces involved and their different construction would not facilitate the use of such a cushion. Furthermore, there is no teaching in Burris et al. of the need for such a cushion. Accordingly, Applicant submits that claim 5 is not obvious over these two references.

**No Prosecution History Estoppel**

Claim 7 has been amended to clarify the claimed subject matter. No prosecution history estoppel would be applied to the

interpretation of the limitations set forth in claim 7 and claims 5 and 8 which depend therefrom in view of the fact that this subject matter has been continuously presently since the original filing date of the present application.

**Conclusion**

In view of the above remarks, it is believed that the claims clearly distinguish over the patents relied on by the Examiner, either alone or in combination. In view of this, reconsideration of the rejections and allowance of all the claims are respectfully requested.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Robert F. Gnuse (Reg. No. 27,295) at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

Applicant respectfully petitions for a two month extension of time to October 26, 2004, within which to respond to the Office Action of May 26, 2004. The prescribed fee in the amount of \$430.00 is attached hereto.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees

Appl. No. 09/691,216  
Amendment dated October 25, 2004  
Office Action dated May 26, 2004

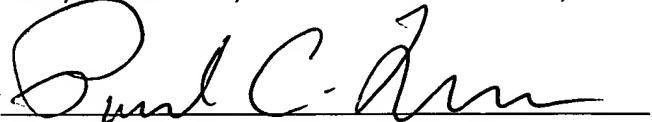
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Group Art 2642  
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required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of  
time fees.

Respectfully submitted,

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 JMS:RFG/mks  
3542-0111P

for

#43,368

Attachments - Check in the amount of \$430.00  
Copy of Letter Dated July 3, 2003  
With Attached Drawing Correction